

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-193147

DATE: March 7, 1979

MATTER OF:

J. S. Tool Co., Inc.

DLG-101121

[Allegation of Unduly Restrictive Specification in IFB]

DIGEST:

1. Fact that potential bidder is unable or unwilling to compete because of terms of specification does not render specification unduly restrictive if it represents legitimate needs of agency. Specification requiring bidders to submit sample wrenches for toughness test to ensure that they will not fragment when used as contemplated is legitimately related to agency's needs.
2. Protester has not shown with clear and convincing evidence that agency lacked reasonable basis for incorporating "toughness" test into new specifications for two types of wrenches. Since they are of similar metallurgical structure, and both are used to repair jet engines, deficiencies in one type of wrench provide adequate basis for agency determination to require toughness test in procurement of both types.
3. Agency is not obligated to notify incumbent supplier of specification changes that will be incorporated in future solicitations; inclusion in new solicitation issued to all potential bidders at same time is adequate notice.

J. S. Tool Co., Inc. (J. S. Tool) protests the inclusion of a "toughness" test in the specifications of invitation for bids (IFB) No. FTAN-F3-10119-A-10-11-78, issued by the Federal Supply Service, General Services Administration (GSA) on September 11, 1978. By this solicitation, GSA intended to procure crowfoot wrenches used primarily to repair and maintain jet aircraft engines. J. S. Tool did not submit a bid.

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J. S. Tool has supplied crowfoot wrenches to the Government for five years. It is agreed that these wrenches meet the specifications under which they were procured. However, GSA reports, users complained that when a certain amount of pressure was applied, the wrenches would shatter; this breakage caused personal injuries and damage to engines. In mid-1978, the Air Force, a primary user, tested J.S. Tool's wrenches under its Defective Parts and Component Control Program, and released two "Safe-Alert" bulletins to inform interested parties in Government and industry of the potential hazards.

Shortly thereafter, GSA decided to revise the specifications in order to ensure better quality wrenches that would not fragment at failure. The result was the inclusion of a "toughness" test in the protested solicitation. This test requires that pressure be applied to two sample wrenches and gradually increased until the wrench either deforms and slips, snaps or breaks off. If any part of the wrench being tested snaps or breaks off, the wrench would be considered too "brittle" and would fail the test.

J. S. Tool challenges this test as being an improper restrictive specification which will result in the procurement of wrenches exceeding the minimum needs of the Government. The protester admits that its current crow-foot wrench will not pass the test. It further states that its production cannot be changed to produce tools able to pass the test. Thus, J. S. Tool argues, the new specification prevented it from bidding.

The protester recognizes the responsibility of the contracting agency to determine the Government's minimum needs, but argues that GSA's determination in this case was made without a reasonable factual basis. J. S. Tool contends that the studies which GSA relied on were insufficient to warrant adoption of the test, because the Air Force tested only the protester's type I wrench (open end box), not its type II wrench (open end).

J. S. Tool argues as follows:

"If, based on customer complaints and thorough testing, the Government determined that it was necessary to revise the specifications for type I wrenches, that in no way implies that there was a need to change specifications for different products. Clearly, such a change was made without a factual foundation, for the Government has totally failed to show the need for the revised specification for any product other than the type I wrench."

J. S. Tool also protests that the Government neglected to adequately inform it, as the incumbent supplier, of the incorporation of the "toughness" test into the specifications. As a result, the protester was unable to adjust its design and production methods to meet the new requirements. J. S. Tool points out that GSA referred to a "proposed" new test and asked for comments on it, but never advised J. S. Tool of its adoption.

For the reasons set out below, we disagree with the protester's contentions.


The determination of the minimum needs of an agency and the methods of accommodating them are the responsibility of the agency. Bowne Time Sharing, Inc., B-190038, May 9, 1978, 78-1 CPD 347. Government procurement officials are familiar with the conditions under which supplies, equipment or services have been used in the past and how they are to be used in the future. Therefore, when a protester challenges a performance test as being unduly restrictive or as exceeding the minimum needs of the Government, this Office will not substitute its judgment for that of the contracting agency unless it is shown by clear and convincing evidence that the required test has no reasonable basis. Informatics, Inc., B-190203, March 20, 1978, 78-1 CPD 215. The fact that a potential bidder is unable or unwilling to compete because of the terms of a specification does not render the specification unduly restrictive if it represents the legitimate needs of the agency. Id.

J. S. Tool has not shown that GSA lacked a reasonable basis for incorporating the "toughness" test into the specifications. The protester asserts that the studies on which GSA based its decision were insufficient in that only Type I wrenches were tested. We have been informed by the Air Force, however, that the same studies and tests would also apply to type II wrenches. Type I and type II wrenches are different only in shape. The metallurgical structure is the same for both. It is the weakness of the tool which is addressed by the studies and the new specification. The sample wrenches were tested for hardness, chemistry and metallurgical microstructure. It was found that tools made of cast steel are weaker than those made of forged steel. Since either type of wrench is likely to be used in work on jet engines, the need for integrity applies equally to both. Therefore, the fact that only type I wrenches were tested does not render the studies insufficient as the basis for GSA's determination to incorporate a "toughness" test into the specifications. Physical injuries and damage to machinery and engines are legitimate concerns of the agency. To eliminate these hazards and to ensure a better quality wrench are sufficient reasons to require that sample wrenches pass a "toughness" test. Furthermore, the evaluation data submitted by GSA reveal that the samples submitted by all bidders complied with the test. For these reasons, we do not find the test to be an improper restrictive specification which will result in the procurement of wrenches exceeding the minimum needs of the Government.

We also disagree with J. S. Tool's protest that it received inadequate notice of the specification change. We know of no duty of the Government to notify incumbent suppliers of specification changes that will be incorporated in future solicitations. GSA was not obligated to inform J. S. Tool of such a change until an IFB was issued. The "toughness" test was included in the IFB issued by GSA on September 11, 1978. Bid opening was set for October 11, 1978. The protester was given as much time as other bidders who were able to submit bids by that date, and the fact that J. S. Tool chose not to submit a bid does not evidence unfair treatment by GSA.

Furthermore, by means of the "safe-alert" bulletins, the protester was warned of the problems associated with its wrenches and was apprised of the possibility of a "toughness" test being included in future solicitations.

The protest is denied.


Deputy Comptroller General
of the United States